

ESTTA Tracking number: **ESTTA666468**

Filing date: **04/14/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Fagron Group B.V. besloten vennootschap
Granted to Date of previous extension	06/10/2015
Address	Kralingseweg 207-211 NL-3062 CE Rotterdam, NETHERLANDS
Correspondence information	Pou-I #Bonnie# Lee Bryan Cave LLP 1290 Avenue of the Americas New York, NY 10104 UNITED STATES bonnie.lee@bryancave.com Phone:2125411176

### Applicant Information

Application No	86203239	Publication date	02/10/2015
Opposition Filing Date	04/14/2015	Opposition Period Ends	06/10/2015
Applicants	<p>MARIA ANTONIA YPENZA DUMETT Comerciantes #5824, Arcos Guadalupe Zapopan, Jalisco, 45037 MEXICO</p> <p>SALOMON CESAR IPENZA DUMETT Comerciantes #5824, Arcos Guadalupe Zapopan, Jalisco, 45037 MEXICO</p> <p>DAVID REYNALDO CARUAJULCA YPENZA Comerciantes #5824, Arcos Guadalupe Zapopan, Jalisco, 45037 MEXICO</p>		


### Goods/Services Affected by Opposition

Class 003. First Use: 2014/02/17 First Use In Commerce: 2014/02/17 All goods and services in the class are opposed, namely: Bath soaps; Beauty creams; Beauty lotions; Hair shampoos and conditioners; Sculpting gel
Class 005. First Use: 2014/02/17 First Use In Commerce: 2014/02/17 All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Dietary fiber to aid digestion; Laxatives; Nutritional supplement shakes; Nutritional supplements; Vitamin preparations

## Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Failure to use

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4565913	Application Date	05/16/2013
Registration Date	07/15/2014	Foreign Priority Date	NONE
Word Mark	FAGRON		
Design Mark			
Description of Mark	The mark consists of the stylized wording "FAGRON" in black lettering, with a red snake design appearing over a blue-grey semi-circle design. The color white represents background or transparent areas in the mark and is not claimed as a feature of the mark.		
Goods/Services	<p>Class 001. First use: First Use: 0 First Use In Commerce: 0 Chemicals for use in the pharmaceutical industry</p> <p>Class 003. First use: First Use: 0 First Use In Commerce: 0 Bleaching preparations for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps for household and personal use; perfumery, essential oils, cosmetics, hair lotions; dentifrices</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical preparations for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; pharmaceutical products, namely, veterinary preparations for the treatment of infections, diseases and disorders of the cardiovascular, musculoskeletal central and peripheral nervous, genitourinary and respiratory systems, and skin conditions in animals, sanitary preparations for</p>		

	<p>medical use, dietetic foods adapted for medical use, food for babies, plasters for medical purposes, materials for dressings, namely, netting, gauze, non-woven material, foam and plastic film, material for stopping teeth, dental wax, disinfectants for hygienic purposes, preparations for destroying vermin, fungicides, herbicides</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0</p> <p>Packaging materials of paper, cardboard and plastic included in this class, namely, paper packaging, cardboard packaging, plastic bags for packaging, plastic bubble packs for packaging, plastic film for packaging</p>
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U.S. Registration No.	4445781	Application Date	02/22/2013
Registration Date	12/10/2013	Foreign Priority Date	NONE
Word Mark	FAGRON		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 0 First Use In Commerce: 0</p> <p>Bleaching preparations for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices</p>		

U.S. Registration No.	4449440	Application Date	10/10/2012
Registration Date	12/17/2013	Foreign Priority Date	NONE
Word Mark	FAGRON		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: First Use: 0 First Use In Commerce: 0</p> <p>Chemicals for use in industry and science</p> <p>Class 005. First use: First Use: 0 First Use In Commerce: 0</p> <p>Pharmaceutical preparations and substances for the treatment of viral, metabolic, endocrine, musculoskeletal, cardiovascular, cardiopulmonary, genitourinary, sexual dysfunction, oncological, hepatological, ophthalmic, respiratory, neurological, gastrointestinal, hormonal, dermatological, psychiatric and immune system related diseases and disorders; veterinary preparations for the treatment of infections, diseases and disorders of the cardiovascular, musculoskeletal, central and peripheral nervous, genitourinary and respiratory systems, and skin conditions in animals; sanitary preparations for medical use; dietetic foods adapted for medical use; food for babies; plasters for medical purposes; materials for medical dressings, namely, netting, gauze, foam and plastic film; material for stopping teeth, dental wax; disinfectants for hygienic purposes; preparations for</p>		

	destroying vermin; fungicides, herbicides		
U.S. Registration No.	4446890	Application Date	03/20/2013
Registration Date	12/10/2013	Foreign Priority Date	NONE
Word Mark	FAGRON LETS KIT		
Design Mark			
Description of Mark	The mark consists of a light blue half circle with a vertical red snake through the half circle and the wording "LETS KIT" in black directly to the right of the half circle.		
Goods/Services	Class 001. First use: First Use: 2013/02/21 First Use In Commerce: 2013/02/21 Inactive chemical vehicles and chemical bases for use in the manufacture of pharmaceutical preparations, namely, lidocaine, epinephrine bitartrate, sodium metabisulfite, and tetracaine used to compound laceration treatments Class 005. First use: First Use: 2013/02/21 First Use In Commerce: 2013/02/21 Pharmaceutical preparations, namely, lidocaine, epinephrine bitartrate, sodium metabisulfite, and tetracaine used to treat lacerations		
Related Proceedings	N/A		
Attachments	79130871#TMSN.png( bytes ) 79128620#TMSN.png( bytes ) 79120217#TMSN.png( bytes ) 85881400#TMSN.png( bytes ) Varon Opposition Notice.pdf(16759 bytes )		

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/pouibonnielee/
Name	Pou-I #Bonnie# Lee
Date	04/14/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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FAGRON GROUP B.V.,	:	
	:	
Opposer,	:	
	:	
v.	:	Mark: VARON & Design
	:	Serial No.: 86/203,239
DAVID REYNALDO CARUAJULCA YPENZA;	:	Filed: February 25, 2014
SALOMON CESAR IPENZA DUMETT;	:	Published: February 10, 2015
MARIA ANTONIA YPENZA DUMETT,	:	
	:	Opposition No. _____
Applicants.	:	
	:	
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**NOTICE OF OPPOSITION**

Fagron Group B.V. (“Fagron”), a Dutch limited liability company (besloten vennootschap or b.v.) with its principal place of business at Kralingseweg 207-211 NL-3062 CE Rotterdam, Netherlands, believes that it will be damaged by the registration of the mark VARON & Design, Application Serial No. 86/203,239 (“Application”), which was filed on February 25, 2014, by David Reynaldo Caruajulca Ypenza, Salomon Cesar Ipenza Dumett, and Maria Antonia Ypenza Dumett (the “Applicants”), for use in connection with goods in International Classes 3 and 5, based upon the following grounds:

**FAILURE TO USE MARK ON GOODS RECITED**

1. Upon information and belief, Applicants have never used the mark VARON in the U.S. on any goods recited in their application prior to the filing of the use-based Application.
2. Registration should be refused pursuant to 15 U.S.C. § 1051(a), on the grounds that Applicants did not use the mark in commerce prior to the filing of the use-based Application.

### **LIKELIHOOD OF CONFUSION**

3. Fagron owns three U.S. registrations for trademarks containing the trade name and trademark FAGRON.

4. Fagron owns the registration for the FAGRON & design trademark (Reg. No. 4,565,913, hereinafter “‘913 Registration”) in International Class 1 for “chemicals for use in the pharmaceutical industry;” International Class 3 for “bleaching preparations for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps for household and personal use; perfumery, essential oils, cosmetics, hair lotions; dentifrices;” International Class 5 for pharmaceutical preparations for the treatment of metabolic and gastrointestinal diseases and disorders, and sexual dysfunction, among other things; and other goods in International Class 16.

5. The priority date of the ‘913 Registration is May 16, 2013.

6. Fagron owns a second registration for the FAGRON word mark in plain block letters (Reg. No. 4,445,781, hereinafter “‘781 Registration”) in International Class 3 for “bleaching preparations for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.”

7. The ‘781 Registration has a priority date of February 22, 2013.

8. Fagron owns a third registration for the FAGRON word mark in plain block letters (Reg. No. 4,449,440, hereinafter “‘440 Registration”) in International Class 1 for “chemicals for use in industry and science;” and International Class 5 for pharmaceutical preparations and substances for the treatment of metabolic and gastrointestinal diseases and disorders, and sexual dysfunction, among other things.

9. The ‘440 Registration has a priority date of October 10, 2012.

10. Fagron's subsidiary owns a registration for FAGRON LETS KIT & design (Reg. No. 4,446,890) for chemicals for compounding pharmaceuticals in International Classes 1 and 5, claiming a first use date of February 21, 2013.

11. Since at least as early as June 4, 2010, the mark FAGRON has been used in the U.S. by and/or under the authority of Fagron in connection with, among other things, pharmaceutical products.

12. Applicants seek to register the VARON & Design indicia in International Class 3 for "bath soaps; beauty creams; beauty lotions; hair shampoos and conditioners; sculpting gel," and International Class 5 for "dietary and nutritional supplements; dietary fiber to aid digestion; laxatives; nutritional supplement shakes; nutritional supplements; vitamin preparations" (collectively, "Applicants' Goods").

13. Applicants' Application directed to the VARON & Design mark is a use-based application claiming a first use date of February 17, 2014 for all of Applicants' Goods.

14. All of Fagron's and its subsidiary's registrations have priority over Applicants' Application.

15. Fagron and/or its subsidiary's common law use of FAGRON similarly predates Applicants' claimed first use date.

16. Upon information and belief, VARON and FAGRON are similar in appearance, sound and commercial impression.

17. Upon information and belief, Applicants' Goods are related to the goods recited in the Fagron registrations.

18. Registration should be refused pursuant to 15 U.S.C. § 1052(d), on the grounds that Applicants' VARON trademark so resembles Fagron's FAGRON mark, as to be likely to cause

confusion, to cause mistake, or to deceive, with consequent injury to Fagron and the public.

**FRAUD**

19. On February 25, 2014, Applicants filed the use-based Application for the mark VARON, falsely claiming that they began using the mark on February 17, 2014 in the U.S.

20. Upon information and belief, Applicants have never used the mark VARON in the U.S. on, or in connection with, any goods recited in their Application.

21. Upon information and belief, Applicants knew that the mark VARON & Design was never used in the U.S., and that use was required in the U.S. in order to file a use-based application.

22. Upon information and belief, Applicants misrepresented a material fact to the United States Patent and Trademark Office ("USPTO"), with an intent to deceive the USPTO to obtain a registration for the mark VARON & Design.

23. Upon information and belief, the USPTO relied on the misrepresentation by allowing the Applicants' Application to publish. Had the USPTO known the true facts, it would not have published the Application.

24. Registration of the Application should be refused on the grounds that Applicants committed fraud while applying for a trademark registration.

WHEREFORE, Fagron believes it would be damaged by the registration of the Applicants' VARON & Design mark with respect to Applicants' Goods, and respectfully requests that the opposition be sustained, registration of Applicants' mark in International Classes 3 and 5 be denied, and that the Trademark Trial and Appeal Board grant such and other further relief as it deems just and appropriate.



Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Fagron's counsel, Bryan Cave LLP, at the addresses stated below.

Dated: April 14, 2015

New York, New York

Respectfully submitted,

BRYAN CAVE LLP

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*Attorneys for Opposer Fagron Group B.V.*

**CERTIFICATE OF SERVICE**

I, Pou-I “Bonnie” Lee, hereby certify that a copy of the foregoing Notice of Opposition was served on the person listed below by first class mail, postage prepaid, and email on April 14, 2014:

Elsa Torres  
1209 San Dario Ave. PMB A-215  
Laredo, Texas 78040-4505

*Domestic Representative/Correspondent for Applicants*

/s/ Pou-I “Bonnie” Lee  
Pou-I “Bonnie” Lee